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IN THE HIGH COURT OF JUDICATURE AT JABALPUR, M.P. Single Bench (Criminal

Criminal Appeal No. 1207 of 2000.

APPELLANTS:- (In jail)

1. Gans Khan aged 18 years S/o Abdul Wahab, R/o Labour Camp Jamul, Distt. Durg.

2. Ashok Kumar, aged about 19 years, S/o Lakhan Gupta, R/o Labour Camp, Jamul, District Durg, M.P.

VERSUS

RESPONDENT: State of Madhya Pradesh, through, R. Station House Officer, P.S. Jamul, Distt. Durg, M.P.

APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE.

(25)

Criminal Appeal No.1207/2000

Gous Khan and another

vs.

State of M.P.(C.G.)

JUDGMENT

POST FOR : 29-8-2001.

Sd/-
R.S. Garg
Judge

Marhara
GH 2918

(96)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO.1207/2000

Gous Khan and another

vs.

State of M.P.(C.G.)

JUDGMENT

Per Hon'ble R.S. Garg, J :

Appellants Gous Khan and Ashok Kumar being aggrieved by the judgment dated 15-4-2000 passed in Sessions trial No.326/99 by the learned VIth Additional Sessions Judge, Durg convicting the appellants under Section 307 IPC, in the alternative under Section 307/34 I.P.C., and sentencing them to undergo R.I. for seven years and pay fine of Rs.500/- each, in default of payment of fine to undergo further R.I. for three months, have filed this appeal.

2. The prosecution case in brief was that on 6-6-1999 at about 8.00 p.m. at the Labour Camp, Jamul, the accused persons caused injuries to Pawan Kumar by means of knife and had the victim died the accused would have been guilty of murder. The prosecution says that at about 7.45 p.m. victim Pawan Kumar was sitting in the house of Dr.Homlal. Appellant Ashok Kumar came to him and required to accompany him. The victim was taken to an isolated place where Gous Khan, Mukesh and Rizwan were sitting. On arrival of Pawan Kumar, one Mukesh Kumar threw chilly powder in his eyes and at the same time appellant Gous Khan caused injuries to him on his abdominal region by means of a knife. The prosecution further says that Ashok Kumar also caused him injuries. Pawan Kumar ran away from the spot,

reached to his house and informed his mother that he was hit by accused Gous Khan. Dr.Homlal was immediately requisitioned who after tying a cloth on the abdominal region suggested that the victim be taken to the hospital. On way to the hospital, Sub Inspector of Police, Jamul, Basant Kumar Mishra, met them and recorded the dehati nalishi. The victim was examined by Dr.Praveen Chandra who after examining the injuries certified that the injuries were grievous and were of nature sufficient to cause death in ordinary course of life. The police agency seized the stained shirt of the victim and on the memorandum of Gous Khan and Ashok Kumar discovered the knife. The articles so seized were sent to the F.S.L., panchnamas were prepared, the statements of the witnesses were recorded and on completion of the investigation challan was filed against the accused persons. The accused persons denied the commission of offence and pleaded not guilty, therefore, they were put to trial. The prosecution agency examined nine witnesses in support of its case while the accused persons examined Babbu Khan(D.W.1) and Santram(D.W.2) in their defence. After hearing the parties, the learned trial court convicted and sentenced the accused persons as referred to above, therefore, they have filed this appeal.

3. Shri Shiv Shankar Singh, learned counsel for the appellants, submitted that Ex.P/9, the dehati nalishi, does not say that accused Ashok also made an attack on the victim, therefore, the subsequent statements of the witnesses that accused Ashok was also involved in the commission of the crime cannot be relied upon. He further submits that the articles seized at the instance

of the accused persons were not found stained with blood, therefore also, the accused persons deserve to be acquitted. He also submitted that there are material contradictions in the statements of the witnesses and as the court below has not taken the evidence in its true perspective this Court must reappreciate the evidence and record a finding in favour of the accused persons. He lastly submitted that the court below was unjustified in awarding such a harsh sentence.

4. Contending contrary to the said submissions, Shri Ranveer Singh, learned Govt. Advocate, submits that if the mother did not narrate the full story to the police and even if the victim Pawan Kumar suffering great pains because of the injuries was unable to give the entire picture or narrate the entire story to his mother, the statements of prosecution witnesses cannot be disbelieved. He submits that the F.S.L. report showing that the articles were not stained with blood would not help the accused because if the witnesses are reliable, then the seizure would become immaterial. According to him, the witnesses have given the natural version of the incident and the same do not suffer with any vice of contradictions. He lastly submits that the court below was justified in awarding the jail sentence.

5. I have heard the parties at length and have gone through the records.

6. Pawan Kumar, the victim, has been examined as P.W.2. He had clearly stated that accused Ashok after coming to him asked him to go towards the plain area. When they reached the said field, co-accused threw chilly powder in his eyes, thereafter

accused Gous Khan caused him injuries by means of a knife. Accused Ashok hit him by means of a rod on his back of his head. Co-accused Rizwan also hit him on his head. He fell on the ground and thereafter ran away from the spot. He again fell on the ground and treating him dead the accused left the place of occurrence. According to him, after giving pressure on his abdomen, he went to his house and informed his mother that he was hit by Gous Khan and thereafter fell on the ground. After some time, Dr.Gajpal came to his house, put his omentum in his abdominal cavity and tied a cloth around the abdominal region. According to him, immediately thereafter his father, uncle and Dr.Gajpal took him to the government hospital. He also stated that he required the accused Ashok not to commit theft, therefore, the accused persons made an attack on him. In the cross-examination, he however admitted that in relation to an incident which took place about six years back the victim and Gous Khan were not on talking terms. In paragraph 9, he stated that for first two minutes he had no talk with the accused persons but after that Mukesh threw chilly powder on his face. When he was rubbing his eyes to come out of the effect of chilly powder, he suffered the first injury on his abdominal region and after suffering the injury on his head he bent a little. He also stated in paragraph 9 that Gous Khan was standing in his front while the other three were standing on his back. It was suggested to him that when chilly powder goes in the eyes the vision become blurred and it becomes difficult to see. In paragraph 12, he denied the suggestion of the defence that he was unable to identify

the accused persons as it was dark. It was argued by the learned counsel for the appellants that on one side Pawan Kumar was saying that he was hit on his head by a rod but in paragraph 12 he was saying that the rod was like a dagger, therefore, his statements should be disbelieved. A perusal of paragraph 12 of the statements of this witness would show that the witness clearly stated before the Court that Ashok hit on his head by means of a dagger and he was identifying the dagger as a rod. He denied the suggestion of the defence that he could not identify the accused persons and was making false statements in the Court. In paragraph 14, he stated that aftermeeting the private doctor, he did not go to the police station but the Station House Officer Basant Mishra met him on way, who in his turn required him to go to the hospital. From his statements, it appears that he was admitted in the hospital and the operation was performed upon him.

7. P.W.1 Dr.Homlal stated before the Court that on the fateful day at about 8.00 p.m. mother of the victim Pawan Kumar came to his house and made a request to him to save the victim. He immediately went to the house of the victim where he found that Pawan Kumar was lying on ground. His omentum had come out. He had put the omentum in the abdominal cavity and thereafter tied a cloth so that the omentum does not come out again, thereafter the family members of Pawan Kumar took him to the hospital.

8. As the witness did not speak before the Court about conversation which he had with the mother of the

victim he was declared hostile. He however did not support the prosecution on that material count. It is however to be noted that not even a single question was put to this witness in the cross-examination. From the statements of this witness, it would atleast appear that the mother of Pawan Kumar had come to him, he went to his house and applied first-aid to the victim. On the material point that the victim had suffered certain injuries, he supports the victim.

9. P.W.5 is mother of Pawan Kumar. In her statements, she had clearly stated that Pawan Kumar came to the house in the injured condition and immediately informed her that Gous Khan had hit him by means of a knife. She immediately called Dr.Homlal who gave the first-aid to the victim. According to her, her husband Bhuneshwar and her husband's younger brother Shankar, so also Dhruv also came there. According to her, all these persons took the victim to the hospital. On way to the hospital, dehati nalishi, Ex.P/9, was lodged by her. In the cross-examination, she admitted that the victim was conscious and had he narrated the name of Ashok as an assailant she would have certainly given the said name to the police. In paragraph 5, she admitted that by the time they reached the hospital, her husband, brother-in-law or her son did not inform her that accused Ashok also made an assault on her son Pawan Kumar. In paragraph 7, she admitted that her son did not become unconscious and denied that he did not narrate about the incident.

10. P.W.6 Bhuneshwar is the father of the victim Pawan Kumar. In paragraph 2 of his statements, he

clearly stated that he admitted his son in the hospital and the next day he was informed by P.W.2 Pawan Kumar that Gous Khan made an attack on him and also informed him that co accused Mukesh, Rizwan and Ashok Kumar chased him. In paragraph 4, he admitted that when he came to his house on the fateful night his son was conscious but he had no talks with his son.

11. From the statements of these witnesses, it would clearly appear that on one side P.W.2 Pawan Kumar states before the Court that he was called by Ashok Kumar, he was taken to a particular place where accused Mukesh threw chilly powder in his eyes and thereafter Gous Khan and Ashok Kumar made an assault on the victim by means of a sharp cutting object/from the statements of the other witnesses it would appear that all through P.W.2 Pawan Kumar did not say either immediately or even on the next day that Ashok Kumar was also involved in the said incident.

12. Shri Shiv Shankar Singh, learned counsel for the appellants, submits that non-disclosure of the name of accused Ashok either immediately or even on the next day would certainly create a situation of doubt and appellant Ashok Kumar would be entitled to an acquittal.

13. Shri Ranveer Singh, learned counsel for the State, submits that assuming P.W.2 Pawan Kumar did not mention the name of Ashok Kumar as an assailant immediately after the incident or even on the next day, his statements before the Court for this reason would not become unreliable. According to him, when a person is under great pains after suffering injuries or has undergone the operation, then it would be too much to expect from him that he would give the details

of everything.

14. Dr.Homlal as I have already discussed has not supported the prosecution case. P.W.5 Phool Bai, the mother of the victim, was the first person who received the information about the assault on Pawan Kumar. In her cross-examination and in-chief, she had clearly stated that her son informed her that the assault was made by Gous Khan. In paragraph 3, she had clearly stated that had her son Pawan Kumar informed her about the name of Ashok, then she would have given this detail in Ex.P/9. She had further stated in paragraph 7, that her son did not become unconscious and did not give her the information about the incident. If paragraphs 3 and 7 of her statements are read in juxta position, there would be no problem in holding that Pawan Kumar was not unconscious, he informed his mother that the sole assailant was Gous Khan. P.W.6 Bhuneshwar, the father of the victim, had also stated that even on the next day the victim did not say that Ashok also made an assault on him. From the statements of these two witnesses, it would certainly appear that either on the date of the incident or even on the next day P.W.2 Pawan Kumar was not ascribing any role to the accused Ashok Kumar. True it is that P.W.2 Pawan Kumar had made a clear statement in the Court that an assault was made on his head by accused Ashok but his statement cannot be relied upon in view of the statements of his mother and father. His statement also cannot be relied upon because all through he had been stating that Ashok was armed with a rod and hit him on the back of his head. The doctors have not found any lacerated wound or any

injury caused by any hard and blunt object. The injury on the back of the head is an incised ~~wound~~ one. Undisputedly, an incised wound on the back of the head cannot be caused by a rod. It appears that to come out of this situation, he stated in paragraph 12 that he was identifying or was certifying the rod as a dagger or the dagger as a rod. In my considered opinion, it would not be safe to rely upon the statements of P.W.2 Pawan Kumar to hold the accused Ashok guilty of the offence. Giving the benefit of doubt to accused Ashok, I acquit him.

15. From the statements of the witnesses, it clearly appears that immediately after the incident, after suffering the injuries and even on the next day P.W.2 Pawan Kumar had been stating that he was hit by Gaus Khan. The statements of Phool Bai (P.W.5) are even supported by dehati nalishi, Ex.P/9.

16. At this stage, it would be necessary to appreciate the defence evidence. D.W.1 Babbu Khan had stated that on his inquiries from Pawan Kumar he was informed that the victim could not see the assailant. It is noteworthy that Babbu Khan is the elder brother of the accused Gaus Khan. His statements for this only reason are unreliable. D.W.2 Santram had also stated that after the alleged incident he met the victim Pawan Kumar and inquired from him as to how the incident took place, on which Pawan Kumar told him that because of chilly powder in the eyes he could not see the assailant. In the cross-examination, he admitted that he was a friend of accused Gaus Khan and Ashok.

17. After giving my thoughtful consideration to the

statements of P.W.2 Pawan Kumar, P.W.5 Phool Bai, P.W.6 Bhuneshwar and the statements of P.W.8 Basant Kumar, who had recorded the dehati nalishi at Ex.P/9, I am of the opinion that the defence witnesses are not reliable and the prosecution had successfully proved that accused Gaus Khan caused injuries to the victim by means of a knife.

18. The question for consideration still is that what was the nature of the injuries. Dr. Praveen Chandra Agrawal (P.W.3) had examined the victim on 6-6-1999. He had found as many as six cut injuries on the person of the victim. The victim had suffered three injuries admeasuring 8 x 4 cm., 6 x 6 cm. and 3 x 1 cm. and had suffered two cut injuries admeasuring 3 x 1 cm. and 2 x 1 cm. on his right thigh. He had certified that the injuries were grievous in nature. He had also stated that the general condition of the patient was very bad. From the statements of P.W.2 Pawan Kumar, P.W.5 Phool Bai and P.W.1 Dr.Homlal, it would clearly appear that as a result of the injuries the omentum had come out and Dr.Homlal had put back the omentum in the abdominal cavity. From the statements of the doctor, it would further appear that the injury no.1 was of grievous nature and he was giving the opinion because the omentum had come out. In paragraph 4 of his statements, Dr.Agrawal had further stated that the injuries were sufficient to cause death in the ordinary course of nature.

19. After going through the statements of Dr.Agrawal, I find no hesitation in holding that the injuries were grievous in nature and were sufficient to cause death

in the ordinary course of nature. The victim could be saved because of the timely operation.

20. Confirming the findings recorded by the trial court that accused Gaus Khan made an attack on the person of P.W.2 Pawan Kumar, I also hold that the prosecution was successful in proving its case beyond every shadow of doubt.

21. The court below had awarded seven years R.I. to appellant Gaus Khan. At this stage, I propose to interfere on the question of jail sentence, so also on the question of fine.

22. When an accused is convicted and jail sentence is awarded to him, the prosecution feels satisfied that it has secured a conviction. It adds a feather to the cap of the police that it is successful in securing the conviction but while awarding the sentence a Court must not forget that the victim is also entitled to some compensation. When a person suffers the injuries, then he may get little satisfaction that the wrong doer has been punished but he also needs some compensation because he has suffered the injuries and has suffered ~~an effect of~~ such an experience of the life. Award of jail sentence to an accused simply punishes the accused but does not give any compensation to the victim. Section 357 Cr.P.C. provides that in a given case where the accused is convicted, the Court ~~can~~ looking to the circumstances of the case, can award compensation to the victim. I consider present to be a case of the nature where proper compensation should be awarded to the victim. I reduce the jail sentence of seven years to five years

but I direct the accused to pay compensation of Rs.15,000/- to the victim Pawan Kumar. If he does not pay the compensation, then he shall undergo R.I. for 1½ years. If the said amount is deposited by him, then the said amount would be paid to Pawan Kumar after due verification.

23. The appeal of appellant Ashok is allowed. He is acquitted of all the charges. He appears to be in jail. He be immediately released, if not required in any other offence. The appeal of accused Gous Khan is also partly allowed to the extent indicated above.

24. Let a copy of the judgment alongwith the records be sent to the trial court. The accused Gaus Khan be required to undergo the remaining jail sentence and the default sentence, in case he does not pay the compensation.

Sd/-
R.S. Garg
Judge

H/-
(1+2)